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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RUDY A. DELGADO,

Defendant and Appellant.

F057965

(Super. Ct. No. BF127357A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

* Before Vartabedian, Acting P.J., Gomes, J., and Poochigian, J.

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PROCEEDINGS

On April 2, 2009, appellant, Rudy Adam Delgado, was charged in a felony complaint with second degree burglary (Pen. Code, § 460, subd. (b), counts 1, 3, 4 & 7),¹ attempted first degree burglary (§§ 664/460, subd. (a), count 2), grand theft (§ 487, subd. (a), count 5), vehicle theft (Veh. Code, § 10851, subd. (a), count 6), petty theft (§ 488, counts 8 & 10), and three counts of vehicle tampering (Veh. Code, § 10852, counts 9, 11, & 12).

On May 19, 2009, appellant entered into a plea agreement in which he would plead no contest to one count of second degree burglary (count 1) and vehicle theft (count 6). In exchange for his plea, appellant there would be a lid of two years on his sentence, he would enter into a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, and the remaining allegations would be dismissed. Appellant executed an ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM FOR FELONIES (plea form) acknowledging the terms of the plea agreement and his constitutional rights pursuant to *Boykin/Tahl*.² Appellant acknowledged the consequences of his plea and waived his constitutional rights in the plea form.

At the change of plea hearing on May 19, 2009, the trial court confirmed the terms of the plea agreement with appellant and his counsel. Appellant acknowledged executing the plea form, reviewing his rights with his attorney, and understanding his rights. Appellant stated that he gave up his rights. The parties stipulated to a factual basis for the plea based on the police reports. Appellant pled no contest to counts 1 and 6. The court granted the prosecutor's motion to dismiss the remaining allegations.

On June 10, 2009, appellant filed a statement in mitigation asserting that he only acted as the lookout as accomplices broke into vehicles and stole property, he was

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

remorseful, and he has three young children and a commitment to a young woman. On June 17, 2009, the court found there were multiple victims. The court denied probation and sentenced appellant on count 1 to a term of two years. The court sentenced appellant to a concurrent prison term of two years on count 6. Appellant filed a timely notice of appeal but did not obtain a certificate of probable cause.

FACTS

There was no preliminary hearing and the police reports are not included in the record. According to the probation report, appellant and an accomplice who was 17 years old were seen carrying items away from the scene of a vehicle burglary on March 31, 2009. One victim discovered nothing missing from his vehicle, but the front passenger window was smashed. Other vehicles in the area had suffered break-ins. Investigating officers located a screw driver, a stereo, and a compact disc (CD). Appellant's accomplice had \$671 in currency, colored pens in packaging, and a coin dispensary. Appellant and his accomplice were arrested.

Officers went back to the neighborhood where appellant had been arrested and found a second victim who had property stolen from two vehicles, including 50 c.d.'s, \$771 in currency, a wallet with miscellaneous cards, two car stereos, and a bag of shoes. A third victim reported her vehicle was stolen, but she located it nearby. The rear lock had been broken and the ignition could be started without a key. A fourth victim reported there was damage to her car consistent with a pry tool and was missing a stereo faceplate. A fifth victim reported the theft of a GPS unit which was later found in the possession of appellant and his accomplice. A sixth victim reported the theft of his child's purple backpack which was also found in appellant's possession.

APPELLATE COURT REVIEW

Dixon's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his

own brief with this court. By letter on September 11, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.